

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS Nos.870/99, 881/99, 883/99 and
884/99

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHANBHAI PUNAMBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR UM SHASTRI for Petitioners

MR PV BHATT for Respondents Nos.1 & 3 in SCA
No.870/99, for respondents Nos.1 and 4 in SCA No.881/99,
for respondents Nos.1 and 2 in SCA 883/99 and for
respondents Nos.1 and 3 in SCA 884/99.

MR PJ PATEL for respondent No.2 in SCA Nos.870/99 and
884/99

CORAM : MR.JUSTICE M.R.CALLA and

Date of decision: 11/05/99

COMMON ORAL JUDGEMENT (Per: M.R.Callan,J.)

Through these Special Special Applications, the petitioners, i.e. the claimants whose land had been acquired and who were awarded compensation have claimed the interest from the date the possession was taken till the date when the amount was paid. The dates on which the possession was taken in these four cases are as under:

870/99 3-11-1990

881/99 31-3-1990

883/99 22-8-1985

884/99 21-4-1986

Thus, it is found from the facts of the present cases that the notifications under Sec.4 were issued in these four matters on 6-3-1996, 31-5-1990, 22-12-1988 and 18-12-1992 respectively and the notifications under Sec.6 were issued on 30-5-1996, 29-10-1990, 5-2-1989 and 10-3-1993 respectively; the award was passed by the Land Acquisition Officer on 14-10-1996, 18-1-1992, 27-9-1990 and 7-2-1995 respectively and the same was paid on 2-12-1996, 17-2-1992, 3-5-1991 and 6-4-1995 respectively. It is, therefore, not in dispute that while the possession had been taken on the dates even prior to the date of issue of the notification under Sec.4, the compensation has been paid on later dates as mentioned above.

It is provided in Sec.34 of the Land Acquisition Act that in cases where the compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest at the rate of 9 per cent per annum from the date of taking of the possession until it shall have been so paid or deposited and in terms of the proviso to Sec.34 as was inserted by Sec.20 of Act No.68 of 1984, if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which the possession is taken, interest at the rate of 15 per cent per annum shall be payable from the date of the expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry. Sec.34 with regard to the payment of interest is reproduced as under:

"Payment of interest- When the amount of such

compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per cent per annum from the time of so taking possession until it shall have been so paid or deposited.

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per cent per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

Mr.P.J.Patel appearing on behalf of the respondent No.2 in two cases, i.e. Special Civil Applications Nos.870/99 and 884/99 has filed an affidavit-in-reply on behalf of the respondent No.2 and has relied upon a Government Resolution dated 18-6-1986, the xerox copy of which has been annexed with the affidavit-in-reply dated 3-5-1999. It has been stated in this affidavit that the respondent No.2 is agreeable to pay the interest/rent from the date of taking possession till the date of award to the petitioner as per the Govt. Resolution and terms of award. Mr.Patel has also pointed out that according to the Government Resolution, after the amending Act came into force on 24th September, 1984, the Government is to pay the interest at the rate of 9 per cent. But in case of agreement with the parties, the interest/rent in respect of the land was to be paid at the rate of 4.5 per cent. After considering this question, it has been decided that from the date of taking of the possession, it is to be paid at the rate of 9 per cent per annum on the amount of compensation. Reference has been made in this Government Resolution to the agreement in the prescribed form between the parties from whom the possession has been taken by way of private negotiations. It has also been mentioned in this Government Resolution that it was in the context of the Revenue Department's letter dated 27-11-1963 and that this decision bears the sanction of the Finance Department dated 9-3-1986 and that this decision will be applicable in cases where the possession of the land is taken on the basis of the private negotiations. However, when we called upon Mr.Patel to show as to whether any such agreement was executed by the claimants who are petitioners before us, he frankly submitted that there is no such agreement, what is available with the department

is the receipt in token of taking of the possession. In this receipt, all that has been mentioned is the date on which the possession was taken, the other columns are blank and this receipt in token of the possession cannot be taken to be an agreement as was contemplated under Revenue Department's order dated 29-11-1963 and the fact is that there is no such agreement. Be that as it may, the fact remains that once the Act has been amended on 24th September, 1983 and the rate of interest has been prescribed under Sec.34, such interest has to be paid in terms of Sec.34 and no Government Resolution can have an overriding effect over the provisions of the Act and the Revenue Department has no authority or legal sanction to take any such Government Resolution which is inconsistent to the provisions of the Act. No such Government Resolution which is contrary to the provisions of the Central Act can be available to be acted upon and given effect to, more particularly when no State amendment of this Act has been found or brought to our notice. Even otherwise, it appears that the amendment which was made on 24th September, 1984 has been only partly carried out in this Government Resolution when they speak of 9 per cent interest only and does not speak anything about the period or the rate of interest at 15 per cent per annum for the period beyond one year. In view of the provisions of Sec.34, we find that the petitioners-claimants herein, are entitled to get the amount of interest on the amount of compensation awarded to them and it is very clear that in each of these four matters, the compensation has been paid after much more period than one year from the date of the possession as would be clear from the following table:

Sp.C.A.No.	Date of Possession	Date of compensation paid by the respondent
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870/99	3-11-1990	21-12-96
881/99	31-3-1990	7-2-1992
883/99	22-8-1985	3-5-1991
884/99	21-4-1986	6-4-1995

We, therefore, direct that the petitioners-claimants be paid interest on the amount of compensation awarded to them at the rate of 15 per cent per annum in accordance with the proviso to Sec.34 of the Land Acquisition Act as was inserted by the amendment of 1984 on 24th September, 1984 and the dues shall be paid to each of these petitioners-claimants within a period of three months from the date the certified copy of this

order is produced before the concerned authorities.

All these four Special Civil Applications are allowed as above and the Rule is also made absolute in each of these four Special Civil Applications in terms as aforesaid. In the facts and circumstances of this case, the parties shall bear their own costs.

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